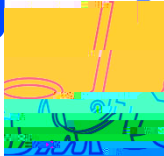




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Housekeeping

- Training based on Title IX regulation effective August 1, 2024
- Our slides summarize key elements of the regulation necessary for a foundational training
- Title IX practitioners should review the regulation in detail, including all its parts
- Some states have laws that conflict with the new Title IX regulation; consult with legal counsel to determine course of action
- Title IX practitioners should monitor court decisions that may alter implementation deadline for all or some portions
- Hypotheticals are fictitious; to ensure realism, some use fact patterns and language that are graphic and challenging



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Agenda (1 of 2)

The Title IX Regulation and Its Implementation

Sex Discrimination and Sex-Based Harassment

Retaliation



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The Title IX Regulation and Its Implementation

Module 1

How is Title IX implemented?



- U.S. Department of Education regulations
- Private lawsuits and related court decisions

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Where are the Title IX regulations?

- 34 C.F.R. (“Code of Federal Regulations”) Part 106
- Contains dozens of different Title IX regulations, including those that govern appointment of a Title IX Coordinator, publication of institutional policies, and requirements pertaining to grievance procedures
- August 2020 “regulation” amended multiple elements of Part 106 and added new ones

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Example

Students Kelly and Jimmi attended a study abroad program together in Poland. While in Poland, Jimmi made repeated sexual overtures to Kelly, which Kelly rebuffed. Upon returning to campus the next semester, Jimmi continued sexual pursuit of Kelly and began texting and messaging Kelly at odd hours and delivering unwanted gifts to Kelly. Kelly moves off campus and begins to limit time in the recreation center and elsewhere to avoid Jimmi.

Example (Poll to Follow)

A university and a college jointly operate a study abroad program in Poland. Kelly, a university student, and Jimmi, a college student,

What institutions does the new Title IX regulation apply to?

- Any institution that receives federal funds and operates an education program
- The regulation has some differing requirements for K-12 institutions and “post-secondary” institutions



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Does the Title IX regulation apply to religious educational institutions?



- Yes, if they receive federal funds
- But the regulation contains a self-executing religious exemption that operates on a particularized basis

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What does the religious exemption say?

“This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenants of such organization.”

34 C.F.R. § 106.12 (emphasis added)

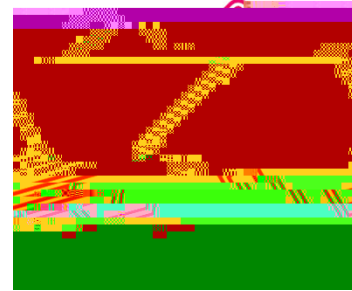
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Example (Poll to Follow)

A seminary founded by a conservative church requires all students and employees to agree to an explicit statement of faith. The chair of the seminary’s board is the national head of the church, and all board members must be practicing members of the church. Students who graduate from the seminary are ordained and go on to serve as religious ministers.

Are there other limitations on the reach of the Title IX regulation?

- Regulation
 - Does not apply to the extent it conflicts with the First Amendment and other Constitutional rights
 - May be limited by the federal Religious Freedom Restoration Act
 - Does not regulate the selection of textbooks or curricular materials



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Example

A public university operates a student newspaper. A journalist for the paper writes an editorial offering the opinion that “most college age males are more interested in taking advantage of women than earning a degree.” A group of male students files a report accusing the journalist of creating a hostile environment for men generally,

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What misconduct does the Title IX regulation address?

- Sex discrimination
 - Sex-based harassment



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What does the Title IX regulation include in the concept of “sex”?

- Assigned sex at birth
- “Biological” sex
- Sex stereotypes
- Sex characteristics
- Pregnancy and pregnancy-related conditions
- Sexual orientation
- Gender identity

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What is sex discrimination?



- Adverse treatment of a person on the basis of sex
- Limits or excludes the person from participating in the institution's education program or activity or denies or limits the benefits thereof

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Programmatic
Discrimination

Individualized
Discrimination

Sex-Based Harassment

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What is programmatic discrimination?

- Where discrimination occurs in a systematic way due to an institutional policy or practice
- Programmatic discrimination adversely affects persons as a group or by category, rather than by individualized decision
- Programmatic discrimination is usually not attributed to an individual perpetrator (i.e., “respondent”)

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Example

A college provides brand new facilities, luxury travel, unlimited food, new equipment, new uniforms, and full ride scholarships for most men’s sports teams. Women’s teams have outdated facilities, ride in vans, eat per-diem, use old equipment and old uniforms, and get only partial scholarships.

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Example

An institution has male and female-designated residence halls. The female halls are either new or newly renovated and all are

Question for Discussion

Is this program permissible, despite excluding (LLP) JTJEt0 TD



Example

A supervisor has interviewed one male candidate and one female candidate for an open position. The supervisor prefers working with men because the supervisor believes women can be “catty” and “emotional.” The supervisor decides to hire the man, and not the woman, because of his stereotypical beliefs about women.

Example

A faculty member at a public university opposes same sex relationships. The faculty member purposefully assigns a harsh grade to an openly gay student because of the faculty member's

Example

A straight, male student, Rick, is uncomfortable being friends with gay men. When a gay male student, James, invites Rick to join conversations or attend social events with James and others, Rick politely declines. Rick does not direct any unwelcome conduct towards James.

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Question for Discussion

Is Rick engaged in sex discrimination against James?

What if Rick were the president of an officially recognized student group and Rick refused to let James join the group because of Rick's discomfort being around gay men?

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What is sex-based harassment?



- Conduct that is sexual in nature or on the basis of sex
- And that constitutes:
 - Quid pro quo harassment
 - Hostile environment harassment
 - Certain specific offenses

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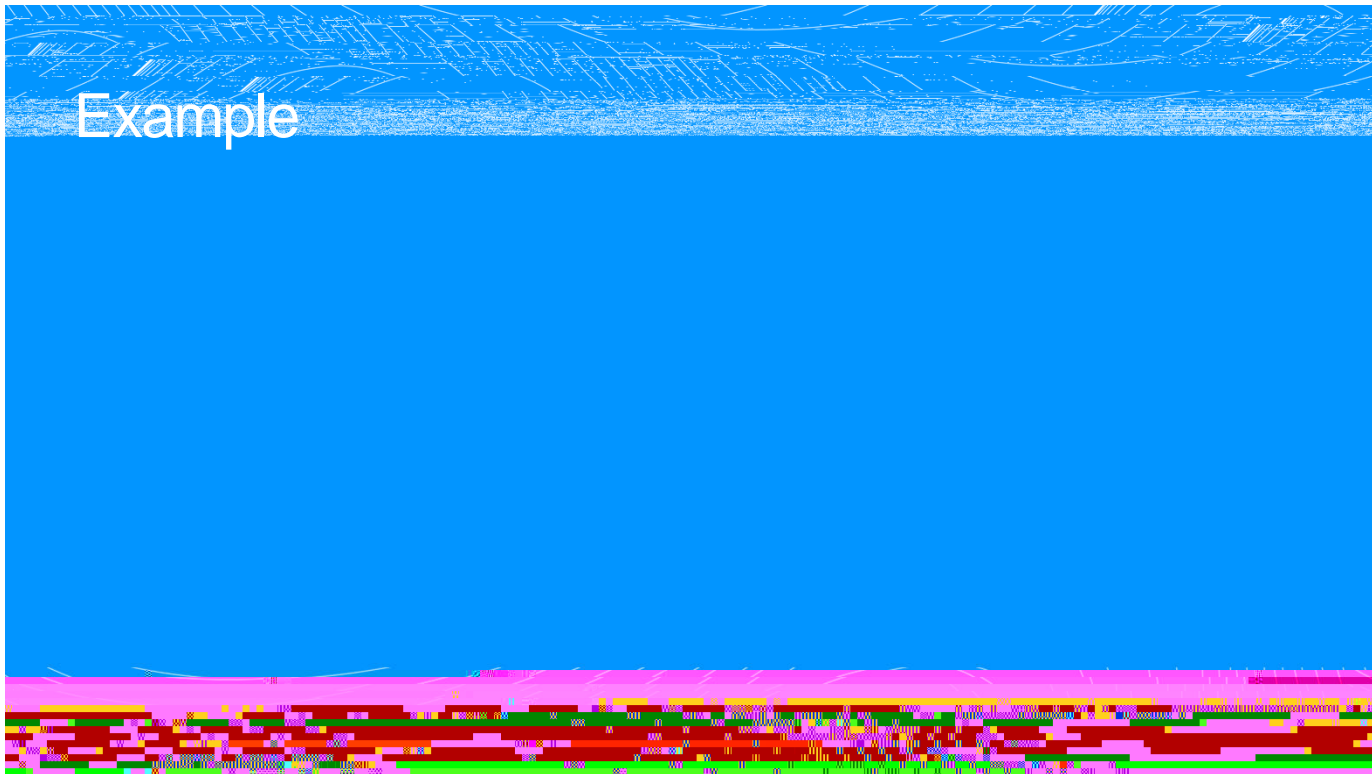
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What's the difference between sexual conduct and conduct that is on the basis of sex?

- “Sexual” means the conduct itself has a sexual nature
- “On the basis of sex” means the conduct is targeted at a person because of their sex

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Example

Frankie, a transgender male, is repeatedly pushed, shoved, and subject to physical aggression by a group of other students who live in the same residence hall. The aggressors engage in their conduct because of their animus towards Frankie's transgender status.

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What are the different categories of sex-based harassment?

Quid Pro Quo
Harassment

Hostile Environment
Harassment

Sexual Assault

Domestic Violence

Dating Violence

Stalking

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Example

The coach of the tennis team repeatedly leers at a particular player's chest and genitals, lingers in the locker room whenever the player is present, tells the player unsolicited details about the coach's prior sexual conquests, and rubs the player's shoulders without permission. The player is increasingly affected by the unwelcome conduct and eventually withdraws from the team to avoid the coach's attention.

69

Question for Discussion

What factors in this scenario weigh in favor of a finding

70

Example

A first-year student is sexually attracted to a graduate student, starts a conversation with the graduate student, and then uses a crude and corny sexual pickup line. The graduate student rebuffs the first-year and asks to be left alone. Two days later, the first-year sends the graduate student an email apologizing for the joke and asking the graduate student to have coffee, like “two responsible adults.” The graduate student does not respond and never hears from the first-year again, although they occasionally pass each other on a public sidewalk.

71

Question for Discussion

What factors in this scenario weigh against a finding of a hostile environment harassment?

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What is dating violence?

“Dating Violence” is violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim, and
- Where the existence of such a relationship will be determined based on consideration of the following factors:
 - The length of the relationship
 - The type of relationship, and
 - The frequency of interaction between the persons involved in the relationship

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Example (Poll to Follow)

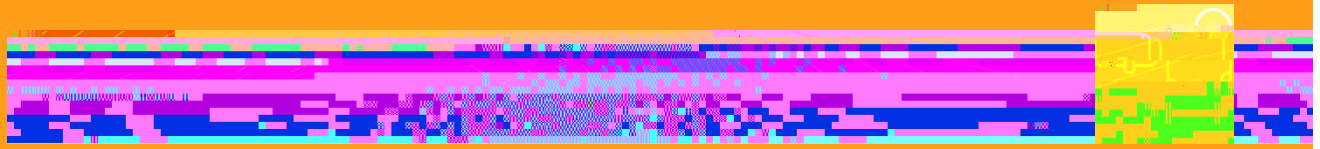
Griff and Dane meet at a party and hookup in Griff’s on campus apartment. The two do not see each other again for three weeks, until they meet at another party and decide to hookup again. During the second hookup, Griff begins to choke Dane without consent, causing Dane to pass out.

86

Question for Discussion

Do Dallas's actions amount to stalking?

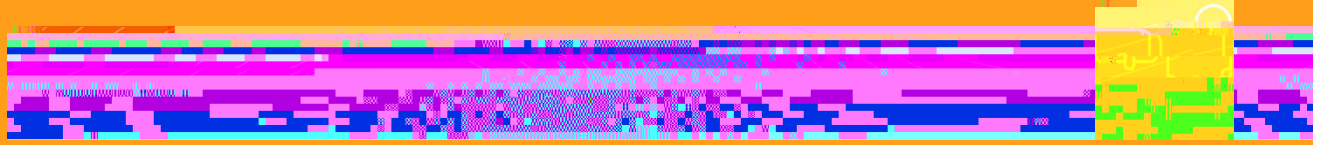
What if, in addition, Dallas repeatedly takes pics of Akilah in the common room and tries to get information on Akilah's interests and hobbies from Akilah's friends? .03 6



Question for Discussion

Did the Title IX Coordinator engage in retaliation?

What if the Title IX Coordinator always rē thērgW1pD.842TD.0



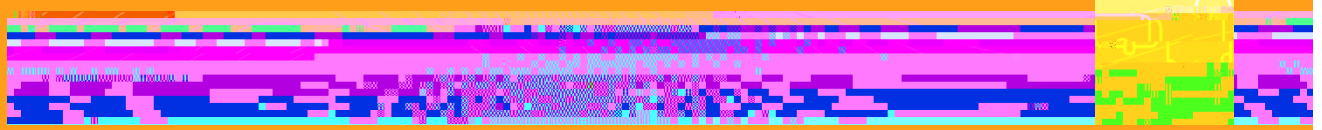
Is it retaliation to punish someone for lying during a Title IX proceeding?

- An institution may punish a person for making false statements in a Title IX proceeding
- Provided there is evidence of falsity apart from the outcome of the Title IX proceeding itself

Question for Discussion

Can Cyrus be disciplined for falsely testifying that he didn't fondle Jamie?

What if, after the Title IX hearing, the institution uncovered security camera footage that clearly depicted Cyrus grabbing Jamie's crotch, and Jamie pulling away in shock?



Practical Point

Institutions should proceed cautiously and not

Can employees be compelled to serve as witnesses?

“Nothing in this definition [of retaliation] . . . precludes a recipient from requiring an employee or other person authorized by a recipient to provide aid, benefit, or service . . . to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.”

New Title IX Regulation

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Example

A faculty member who was at a conference in a neighboring city observed a colleague check into a hotel with a student. The student later made a complaint of quid pro quo harassment against the colleague, and the faculty member is identified as a relevant witness. The faculty member does not want to testify and is concerned that doing so will anger other faculty who are allied with the colleague.



The Title IX Coordinator and Title IX Team

Module 4

Who are the Title IX team members?

- Title IX Coordinator
- Deputy Title IX Coordinators
- Investigators
- Deputy Title IX Coordinators

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Example of Bias

An investigator assigned to a sexual assault case also serves on the board of a local sexual assault advocacy organization. The organization recently announced a new campaign supporting

investigator holds the personal belief that persons who report sexual assault should be believed unless objective evidence proves their allegations to be false.

115

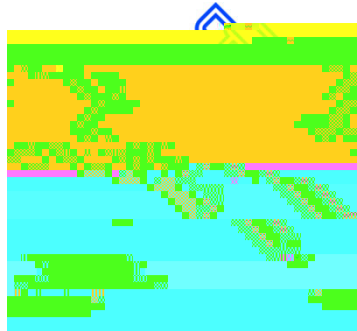
Example of Bias

A hearing officer (a faculty member) had the complainant as a student. As a student, the complainant was frequently absent from class and threatening to fail the student. The email included the following: "I am singularly unimpressed with your performance. You are, without question, one of the laziest and least attentive students I have had in my career. I fear your future is bleak."

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Can the Title IX Coordinator be a decision-maker?

- No per se rule prohibits the Title IX Coordinator from being a decision-maker
- Potential for conflicts of interest
- Potential to undermine confidence in Title IX Coordinator's ability to effectively serve



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Practical Point

If the Title IX Coordinator serves as a decision-maker, the Title IX Coordinator may be unfairly portrayed as generally pro-complainant or pro-respondent depending upon the determination. This portrayal may affect perceptions of the institution's overall Title IX efforts (training; reporting; supportive measures; policy) that the Title IX Coordinator is responsible for.

122

Who can serve as an informal resolution facilitator?



- Cannot be the investigator in the same case
- Cannot be the decision-maker in the same case

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- Appeal officer should be a different person(s) than the person whose decision is appealed



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Reporting

Module 5

What's the difference between a report and a complaint?

- A report is information about potential sex

What triggers the reporting obligation?

- Information about conduct that reasonably may constitute sex discrimination or sex-based harassment
- This is significantly less than a preponderance (i.e., “likely”) standard



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What about non-confidential employees who are not mandatory reporters?

- They must
 - Make a report to the Title IX Coordinator, or
 - Provide contact information for the Title IX Coordinator, and information about how to make a complaint to anyone who provides information about conduct that reasonably could be sex discrimination or sex-based harassment



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Example

John works as a custodian in a residence hall. One day while John is sweeping the tile in a hallway, he sees student Marco run by

Which employees can maintain confidentiality?

- ?



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When does confidentiality apply?

- Only when the employee is acting in their confidential capacity
- Information learned in a non-confidential capacity may be subject to mandatory reporting



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Example

A faculty member is conducting an IRB approved human-subject


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What are examples of supportive measures?

Counseling

Academic accommodations

 Housing accommodations

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Examples

Student Chang reports that student Bo sexually assaulted Chang. Chang claims the assault has made it impossible for Chang to study and attend classes. As a supportive measure, Chang requests to be awarded his degree without having to complete the remaining 15 hours of coursework specified in the catalog.

153

Question for Discussion

Is this requested supportive measure “reasonably available”?

What supportive measures are appropriate when a party claims that sex-based harassment has already impacted their grades?

154

When is a no contact order appropriate as a supportive measure?

- When reasonably available
- When not an unreasonable burden
- When necessary to restore access or preserve safety
- Never for disciplinary or punitive reasons



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What if a party disagrees with a supportive measure decision?

- Institution must provide either party a “timely opportunity” to seek modification or reversal of supportive measure decision applicable to that party
- Appeal goes to an “appropriate and impartial employee” who was not the initial decisionmaker

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Question for Discussion

How detailed does the supportive measure appeal process need to be?

What “grounds” or “standards” govern the supportive measure appeal process?

160

Practical Point

If someone other than the Title IX Coordinator made the initial supportive measure decision, the appeal will likely go to the Title IX Coordinator. If the Title IX Coordinator made the initial supportive measure decision, the appeal will likely go to an administrator with jurisdiction over the party in question (i.e., Dean of Students; Provost; Director of Human Resources).

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What if circumstances change?

- Institution must provide a party with the opportunity to seek modification or termination of supportive measures applicable to them
- If circumstances change materially

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Example

Kline reports that Cletus fondled Kline several months ago at an on-campus party. Kline believes a no-contact order is unnecessary because Cletus now lives off campus and Kline rarely sees them. After Cletus is notified of the complaint, Cletus threatens Kline via text message and begins to regularly appear outside Kline's academic building.

163

What if a party has a disability?

- If a K-12 student: Title IX Coordinator must consult with IEP team and officials responsible for IDEA and Section 504 compliance
- If a college or university student: Title IX Coordinator may consult, as appropriate, with persons responsible for disability supports and accommodations (e.g., a disability services coordinator)

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Can a respondent be removed on an emergency basis?



- A respondent can be removed on an emergency basis if individualized analysis finds:
 - Imminent and serious threat to health or safety of another person, and
 - The respondent is provided an immediate opportunity to appeal the removal decision

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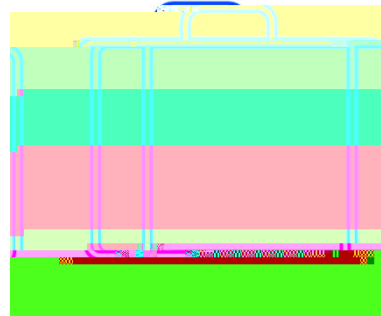
Example

Kline makes a complaint that Cletus fondled Kline several months ago at an on-campus party. When Cletus is notified of the complaint, Cletus sends Kline a text message threatening to kill Kline and attaching a picture of Cletus holding an assault rifle and dressed in tactical gear. Kline reports that Cletus owns several guns and has an extreme temper.

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Can an employee respondent be placed on leave?

- An institution may place an employee respondent on administrative leave from their job duties during the pendency of grievance procedures
- Due process, state law, and contractual obligations may be relevant limitations



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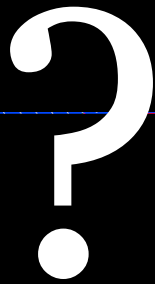
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Example

A faculty handbook states that faculty may only be placed on administrative leave if the President of the institution certifies in writing that placing the faculty member on leave is necessary to prevent a clear and imminent danger to the university, to other employees, or to students.

168

Questions



169

The Grievance Procedures

Module 7

170

Must an institution have grievance procedures?

-



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What are the general principles of grievance procedures?

- Prompt and equitable
- Published in writing
- Administered by persons free of conflicts of interest and bias
- Presumption respondent not responsible until a determination is made
- Reasonable steps to protect privacy
- An objective evaluation of all relevant and not otherwise-impermissible evidence
- Credibility determinations not based on a party's status

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What does the grievance process look like?



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Example

An assistant coach believes that members of women's sports teams are being discriminated against by receiving poor quality food, old uniforms, few training opportunities, and insufficient facilities, relative to men's teams. The assistant coach can file a complaint, even though it is the players who are allegedly being discriminated against.

179

When can the Title IX Coordinator make a complaint?

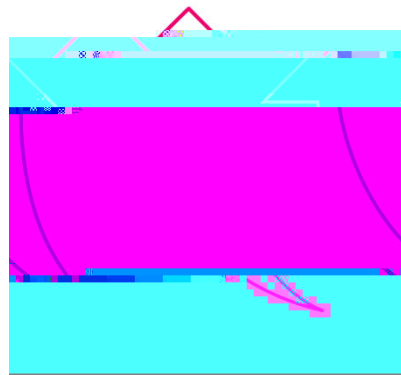
- In the absence of a complaint, or when any or all allegations in a complaint have been withdrawn
- And provided informal resolution is not ongoing
- And provided a fact specific determination justifies making the complaint

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Are complaints evaluated for dismissal?

- Under the new regulation, all dismissals are permissive, rather than mandatory
- But a complaint should still initially be evaluated for dismissal on one or more of several specific grounds



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What are the grounds for dismissal?

- Respondent cannot be identified despite reasonable attempts
- Respondent is no longer a participant and is not employed
- Complainant voluntarily withdraws some or all allegations and the Title IX Coordinator elects not to file a complaint
- The alleged conduct in the complaint (or remaining alleged conduct after withdrawal of some allegations), if proven, would not constitute sex discrimination or sex-based harassment

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Example

Joe, a student, makes a complaint that Joe's sister, Jean, was subjected to discrimination by a faculty member who gave Jean a bad grade solely because the faculty member is trying to weed women out of the field. When Jean is notified of the complaint, Jean states that she was not discriminated against and received a grade merited solely by her deficient work. Jean indicates a desire for the complaint not to proceed.

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Question for Discussion

Has Jean "withdrawn" the allegations?

Should the Title IX Coordinator dismiss the complaint?

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Can a dismissal be appealed?

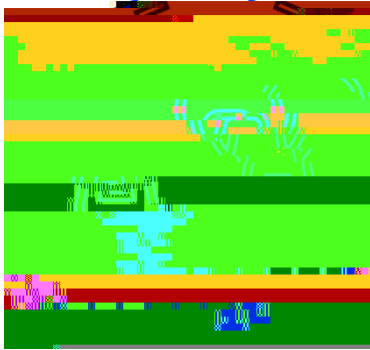


- Institution must notify the alleged victim that the dismissal can be appealed



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Are complaints evaluated for consolidation?



- Complaints may be consolidated when allegations arise out of the same facts and circumstances
- Can involve multiple parties
- If one party is a post-secondary student alleging or accused of sex-based harassment, *46 procedures apply to the consolidated case

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Example

Jimmi alleges that fellow golf team member Sammi engaged in

Example

Crystal alleges that Newt sexually assaulted Crystal one month ago, in Newt's office, when Crystal was too drunk to consent after an employee reception. Separately, Reagan alleges that Newt sexually assaulted Reagan two weeks ago, in Newt's office, when Reagan was too drunk to consent after a donor reception. Crystal and Reagan are aware of each other's complaints, and both refer to Newt as a "sexual predator."

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Question for Discussion

Can these two complaints against Newt be consolidated?

If they are not consolidated, how would they proceed? And would each complainant be involved in the other's grievance process? If so, how?

194

Is there an investigation under *45?

- After a complaint has passed the evaluation stage
- There is an adequate, reliable, and impartial investigation



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What are the key elements of a *45 investigation?

- Burden is on the recipient to gather sufficient evidence
- Parties have equal opportunity to present fact witnesses and other relevant evidence
- Institution must review corpus to determine relevant and not otherwise impermissible evidence
- Provide each party an equal opportunity to access the evidence that is relevant and not otherwise impermissible

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Example

Jamie has accused Victor of dating violence. Jamie alleges that, while the two were on a date at an on-campus softball game, Victor became enraged and slapped Jamie when Jamie returned from the concession stand without having buttered the popcorn as Victor had asked.

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What evidence is impermissible, even if it may be relevant?

- Evidence that is protected under a legal privilege, or that was provided to a confidential employee, unless the party voluntarily waives the privilege or confidentiality
- A person's health care records, unless the person gives voluntary, written consent
- Evidence of the complainant's sexual interests and history•

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How do the regulations define a complainant's sexual history?

- Any evidence that “relates to the complainant’s sexual interests or prior sexual conduct”, unless:
 - Offered to prove that someone other than the respondent
 -

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Are there guidelines for questions about a respondent's sexual history?

- Respondent's prior sexual encounters should not be used simply to demonstrate a character trait
- Prior sexual encounters may be relevant to show a modus operandi
- Prior sexual encounters may be relevant to show motive, opportunity, intent, absence of mistake, lack of accident or to respond to something the respondent has put at issue

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Example

A complainant alleges the respondent sexually assaulted the complainant after the respondent offered the complainant a single drink at a bar and the complainant quickly passed out. At least two other women have been identified as witnesses, who will describe similar sexual incidents involving the respondent where each believes they were drugged.

212

Example

A complainant alleges that a respondent fondled the complainant by groping the complainant's crotch during a dance. The respondent claims the contact was an accident. Ten witnesses have been identified who will testify that, at various dances over the last six months, they experienced similar groping from the respondent.

213

How are interviews to be documented/recorded?

- *45 grievance process does not require any particular form of documentation or recording
- “Interviews” could even be written questions and written answers (provided, the investigator is not also the decision-maker—more on that in a bit)

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How are parties provided access to the evidence?

- Parties get access to either: (1) the evidence itself, or (2) an “accurate description of this evidence”
- If a description is provided, the institution must allow either party to access the underlying evidence, if requested
- Parties must be given a “reasonable opportunity” to respond before a decision is made

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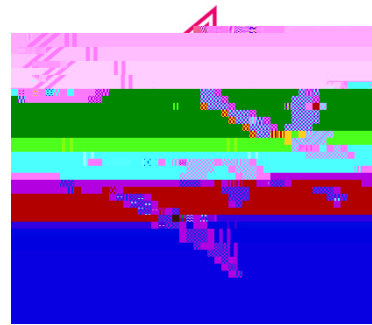
Question for Discussion

If the parties have the right to see the underlying, relevant and not-otherwise impermissible evidence on request, does it make sense to prepare and give access to a description, initially?

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Are the parties required to maintain confidentiality of the evidence (or description)?

- Institution must take reasonable steps to prevent and address parties' unauthorized disclosure of evidence obtained solely through grievance procedures
- Use of evidence for administrative proceedings or litigation related to the complaint itself is authorized



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Example (Poll to Follow)

A complainant alleges that the respondent committed sexual harassment by repeatedly sending the complainant sexual text messages. After the parties are provided access to the investigation evidence, the complainant shares the text messages with several friends.

218

When does the decision occur?

- After the parties have had a “reasonable” opportunity to respond to the relevant evidence and/or accurate description
- After the decision-maker has had the ability to “question parties and witnesses to adequately assess a party or witness’s credibility to the extent credibility is in dispute and relevant”

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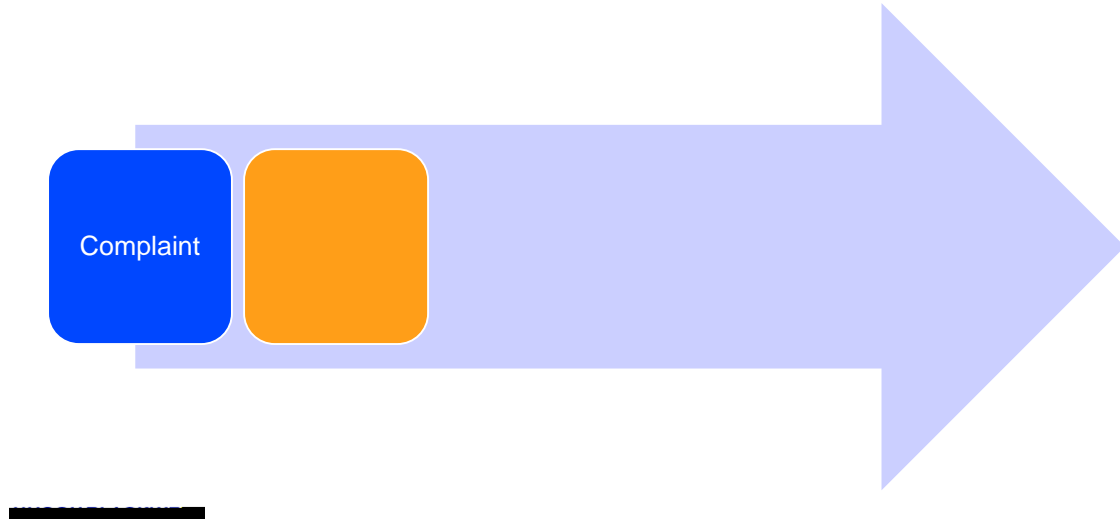
Who is the decision-maker under the *45 process?

- The person who determines whether or not the allegations are supported under the standard of evidence
- The decision-maker can be “the same person as

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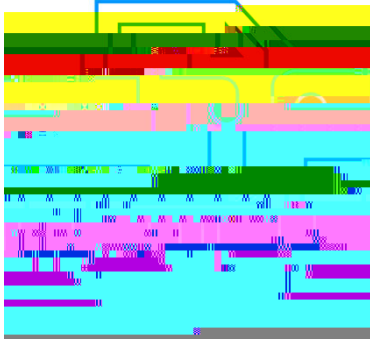


Where do the *46 procedures have augmented requirements?



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Does the *46 process require supplemental notice?



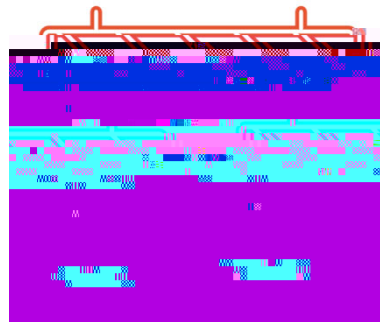
- If, during grievance process, new allegations are added, that are not included in initial written notice
- Institution must issue a supplemental written notice to the parties

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Can the institution delay the written notice?

- Institution may “reasonably delay” in order to address reasonable concerns for the safety of any person as a result of providing the notice
- Concerns must be individualized and not based on speculation or stereotypes



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Example

Sonja makes a complaint that Zeke raped Sonja when Sonja was incapacitated. Sonja makes the complaint on April 30. The institution adjourns for the summer on May 15. Sonja alleges that, after the rape, Zeke sent Sonja a text saying: “Just so we’re clear, everything between us was totally consensual, and if you say otherwise, you’re a dead woman.” Sonja requests that Zeke not be notified until after May 15, when Sonja has her last final and can leave campus to return home.

245

How is the *46 investigation different (1 of 2)?

- Parties must always receive prior written notice of any meeting or proceeding wherein their participation is invited or expected
- Parties have the right to be accompanied to investigative meetings by an advisor of choice who may be a lawyer
- Parties must have the same opportunities, if any, to have any person other than an advisor present

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How is the *46 investigation different (2 of 2)?

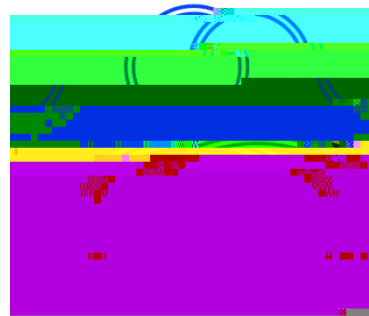
- Institution has discretion to determine whether the parties may present expert witnesses (as long as presented equally)
- Must allow reasonable extension of timeframes on a case-by-case basis for “good cause”, with written notice given to the parties explaining any delay
- Parties and advisors get access to either: (1) the relevant evidence, or (2) the same investigation report that accurately summarizes the evidence

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What is the role of an advisor?

- At the investigation phase, under *46, a party merely has the right to be accompanied
- Institution can limit advisor’s role and make it passive
- Institution does not have to provide an advisor at the investigation phase



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When would parties be allowed to have others present?



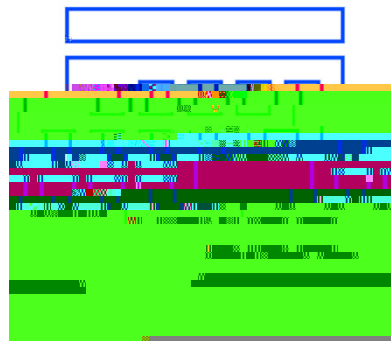
- Institution has discretion to allow parties to have persons in addition to an advisor
- Must give parties the same opportunities
- I.e., second advisor; parent; counselor; spiritual advisor

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When is there “good cause” for extension of timeframes?

- “Good cause” generally means something other than a mere lack of diligence
- It is important to document and provide written notice of all scheduling changes in *46 cases



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Practical Point

The *46 process does not require preparation of a written, investigation report as did the August 2020 regulations. An institution may simply provide the parties and their advisors with access to the relevant and not otherwise-impermissible evidence.

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How does the decision-making phase differ?

- The decision-maker must be able to question parties and witnesses to assess credibility to the extent credibility is disputed and relevant
- Can be achieved through: (1) a live hearing, or (2) an asynchronous, iterative process

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Can other rules of decorum be imposed?

- Reasonable rules of decorum are permissible
- Provided they apply equally to both parties



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What if a party or witness refuses to answer questions at a live hearing?

- If a party or witness refuses to respond to relevant and not otherwise impermissible questions:
 - Decision-maker may choose to “place less or no weight upon” the statements of that party or witness
 - A decision-maker must not draw an inference as to whether or not sex-based harassment occurred based solely on a party or witness’s refusal to respond

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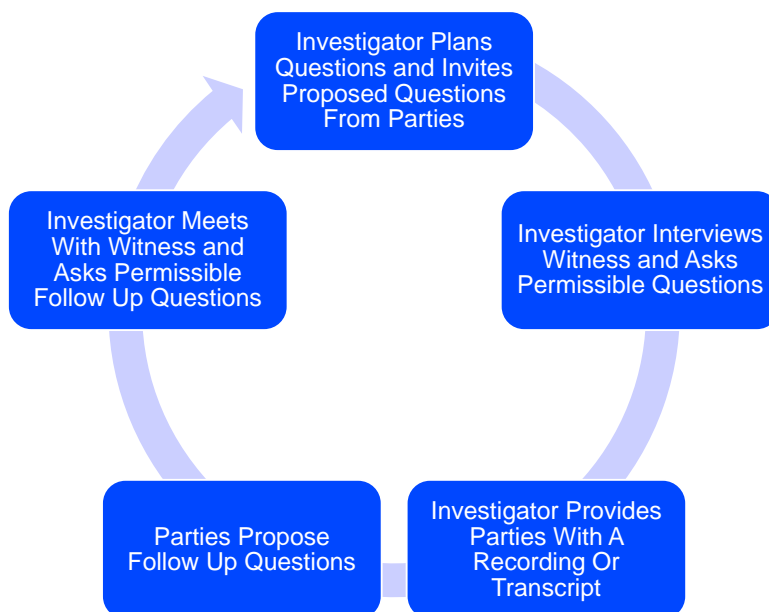
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How does the asynchronous, iterative process work?

- Instead of a live hearing
- Investigator or decision-maker asks questions of parties and witnesses, that the investigator or decision-maker wants to ask, in individual meetings
- Each party is allowed to propose questions the party wants the investigator or decision-maker to ask, and have those questions asked, if appropriate
- Investigator or decision-maker must then provide parties with a recording or transcript of the interview with enough time for the party to propose follow-up questions
- And then a follow-up interview must occur where the appropriate follow-up questions are asked
- All questions still must be relevant, not otherwise-impermissible, clear, and not harassing

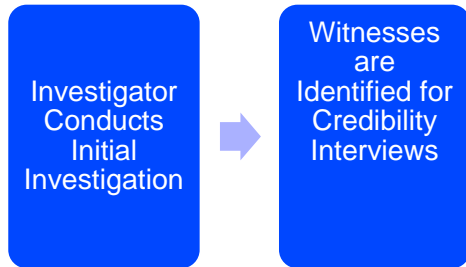
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Under *46, does the decision-maker determine any sanction?

- The sanction simply has to be included in the written determination
- It can be decided by a different person and included in the determination

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Appeals

Module 8

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What types of appeals are required?

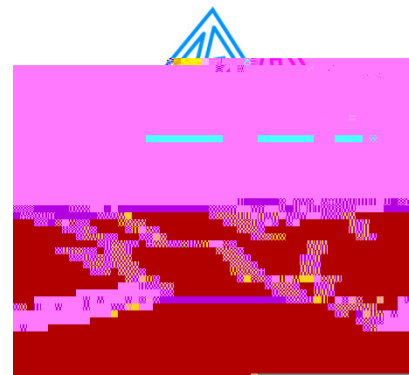
- Appeals of supportive measure decisions
- Appeals of emergency removals
- Appeals of dismissals in both *45 and *46 processes on specified grounds
- Appeals of final decisions in *45 processes the same as offered for “all other comparable proceedings”
- Appeals of final decisions in *46 processes on specified grounds

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How do supportive measure appeals work?

- A party who disagrees with a supportive measure decision (including a request to modify or eliminate) that affects them
- Can appeal to someone other than the person who made the decision and who has authority to implement a change
- The regulation does not specify the “grounds” for appeal



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Example Language

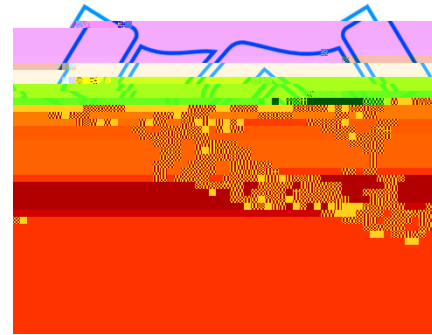
A party who disagrees with a supportive measure decision, including a decision relating to a request to modify or terminate supportive measures based on materially changed circumstances, may file an appeal with the Vice President. The Vice President may provide, deny, modify, or terminate the supportive measure at issue if the Vice President determines the initial decision was not consistent with this policy.

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What is informal resolution?

- An alternative process to the grievance procedure for resolving a complaint of sex discrimination or sex-based harassment



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What are the procedural predicates for informal resolution?

- Must be at least a report of sex discrimination or sex-based harassment
- Institution must determine it is appropriate to offer informal resolution
- Parties must voluntarily consent after receiving notice with certain required elements

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How does the institution consider whether informal resolution is appropriate?

- Institution may, but is not required, to offer informal resolution
- Must consider whether the alleged conduct would present

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Practical Point

An institution will be less likely to approve informal resolution when an employee is accused of serious

- Restrictions on contact



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Example (Poll to Follow)

Asako accuses Ronaldo of raping Asako when Asako was intoxicated. During an informal resolution Ronaldo candidly admits to the Title IX Coordinator, “I should have known better than to have sex with her. But I just didn’t think about it at the time. I’d like to apologize.” Informal resolution fails and the grievance procedures resume.

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Who manages the informal resolution?



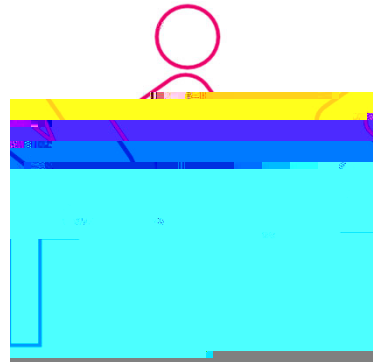
- Informal resolution facilitator
- Cannot be the investigator or decision-maker
- Must be free of conflicts and bias, and appropriately trained on duties and policy provisions

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What does the new regulation say about pregnancy?

- Discrimination and harassment based on pregnancy and related conditions is “sex” discrimination and sex-based harassment
- Institutions have a duty to provide certain accommodations to persons with pregnancy and related conditions



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What are pregnancy and related conditions?

- Pregnancy
- Childbirth
- Termination of pregnancy
- Lactation
- Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation
- Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions

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Example

A faculty member who teaches a weightlifting course learns that Jane, a student in the course, is pregnant. The faculty member is concerned that strenuous lifting might harm Jane and tells Jane that she may only perform unweighted isometric exercises for the remainder of the course. The faculty member routinely allows other students who have strains, sprains, colds, and the flu to lift heavy weights.

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Question for Discussion

Is the faculty member engaging in prohibited discrimination against Jane?

Does it matter that the faculty member's subjective intention is to protect Jane's health?

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What do we do if pregnancy presents a health concern with a particular program or course?

- For purposes of assessing eligibility, pregnancy must be treated the same as other temporary medical conditions
- It is not discrimination for a pregnant student to voluntarily participate in a “separate portion” of a program if it is comparable

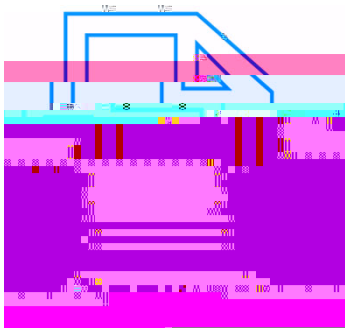


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Example

A faculty member teaches a scuba class. The syllabus specifically notes that persons with compromised breathing, certain cardiac conditions, and conditions that pose a risk of unconsciousness will not be allowed to dive. A pregnant student in the class has developed peripartum cardiomyopathy. The faculty member does

Can we require documentation before granting an accommodation?



- Documentation must not be requested unless it is necessary and reasonable to determine modifications
- Some accommodation needs related to pregnancy are obvious or inherent and need not be documented

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Example

A pregnant student is no longer able to fit into the standard desk used in a particular classroom.

A pregnant student needs to take more frequent bathroom breaks.

A student who recently gave birth has lactation needs.

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Who is responsible for ensuring accommodations?

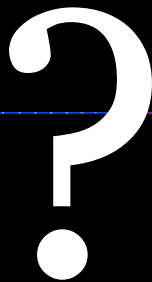


- The Title IX Coordinator must “coordinate these actions”
- Title IX Coordinator must ensure that student is provided notification of protections against discrimination and various pregnancy related rights

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Questions



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